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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION
7

8 DESIREE MOORE and KAREN JONES
9 individually and on behalf of a class of
10 similarly situated individuals,

11 Plaintiffs,

12 v.

13 VERIZON COMMUNICATIONS INC.,
14 VERIZON CALIFORNIA INC., VERIZON
15 CORPORATE SERVICES GROUP INC.,
16 VERIZON SERVICES CORP.,
17 TELESECTOR RESOURCES GROUP, INC.
d/b/a VERIZON SERVICES GROUP,
18 VERIZON SERVICES OPERATIONS INC.,
19 VERIZON SERVICES ORGANIZATION
20 INC., VERIZON CORPORATE SERVICES
21 CORP., VERIZON DATA SERVICES INC.,
22 and DOES 1 through 25,

23 Defendants.
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Case No: C 09-1823 SBA

ORDER

Docket 123, 168

29
30 The parties are presently before the Court on Plaintiffs Desiree Moore and Karen
31 Jones' (collectively, "Plaintiffs") Motion for Final Approval of Class Action Settlement,
32 and Class Counsel's Motion for Attorneys' Fees and Expenses and Class Representative
33 Incentive Awards. Dkt. 123, 168. Defendants Verizon Communications Inc., Verizon
34 California Inc., Verizon Corporate Services Group Inc., Verizon Services Corp., Telesector
35 Resources Group, Inc. d/b/a Verizon Services Group, Verizon Services Operations Inc.,
36 Verizon Services Organizations, Inc., Verizon Corporate Services Corp., and Verizon Data
37 Services Inc. (collectively, "Verizon" or "Defendants") filed a statement of non-opposition
38 to Plaintiffs' Motion for Final Approval of Class Action Settlement. Dkt. 176. Verizon

1 filed an opposition to Class Counsel's Motion for Attorneys' Fees and Expenses and Class
2 Representative Incentive Awards. Dkt. 175. Non-party Enhanced Services Billing, Inc.
3 ("ESBI") filed an *amicus* brief objecting to Class Counsel's Motion for Attorneys' Fees and
4 Expenses and Class Representative Incentive Awards. Dkt. 173. Verizon's opposition and
5 ESBI's objection to Class Counsel's Motion for Attorneys' Fees and Expenses and Class
6 Representative Incentive Awards are limited to Class Counsel's request for attorneys' fees
7 and expenses in the amount of \$7,500,000. Dkt. 173, 175.

8 Having read and considered the papers filed in connection with these matters as well
9 as the arguments made by counsel at the July 9, 2013 Final Approval Hearing, the Court
10 hereby GRANTS Plaintiffs' Motion for Final Approval of Class Action Settlement, and
11 GRANTS IN PART Class Counsel's Motion for Attorneys' Fees and Expenses and Class
12 Representative Incentive Awards. The Court grants Class Counsel's Motion for Attorneys'
13 Fees and Expenses and Class Representative Incentive Awards to the extent Class Counsel
14 seek an incentive award of \$5,000 for each of the Class Representatives. Class Counsel's
15 request for an award of attorneys' fees and expenses in the amount of \$7,500,000 has been
16 referred to Magistrate Judge Jacqueline Scott Corley for determination, subject to review
17 by this Court upon timely request by either party. See Dkt. 189.

18 **I. BACKGROUND**

19 This lawsuit was brought in early 2009 against Verizon on behalf of a proposed
20 nationwide class of current and former Verizon landline customers who were billed for
21 allegedly unauthorized third-party charges submitted to Verizon by billing aggregators on
22 behalf of third-party providers. See Compl., Dkt. 1. The practice of placing unauthorized
23 charges on a customer's monthly phone bill is commonly known as "cramming."

24 The operative complaint alleges that "[t]his class action against Verizon involves a
25 particularly abusive practice: the intentional charging of consumers for products and
26 services they have not requested or authorized and the illegal billing and collection of such
27 charges," i.e., cramming. Second Am. Compl. ("SAC") ¶ 1. According to Plaintiffs, "[t]he
28 problem lies in business practices Verizon has adopted for billing and collecting on behalf

1 of itself and myriad third-party companies for various third-party products and services."
2 Id. Plaintiffs allege that although Verizon is aware of the widespread incidence of
3 unauthorized billing by its third-party providers from customer complaints and from state
4 and federal regulatory bodies across the nation, it has failed to take sufficient steps to
5 ensure that the charges placed on consumers' telephone bills are in fact authorized by the
6 persons legally empowered to authorize such charges. Id. ¶¶ 2-3.

7 Plaintiffs allege that Verizon does not allow most third-party service providers to
8 place charges directly on their bills. SAC ¶ 5. Instead, Verizon requires that the third-party
9 providers bill through billing aggregators who act as an intermediary between the third-
10 party providers and the local exchange carriers ("LECs," i.e., local phone companies such
11 as Verizon). Id. The third parties send their billings to the billing aggregators, the billing
12 aggregators in turn send those billings along to the appropriate LEC, and the LEC places
13 those charges on its customers' monthly phone bills. Id. According to Plaintiffs, "Verizon,
14 the billing aggregators, and the third-party providers know that the billing and collection
15 system used lacks sufficient checks and safeguards to prevent unauthorized charges from
16 being added to customers' wireline telephone bills – indeed, to the contrary, they all know
17 that there is a significant likelihood of unauthorized charges, given the system presently
18 used – and they have knowingly exploited those defective systems to implement and carry
19 out their fraudulent scheme." Id. ¶ 5.

20 Plaintiffs and the putative class and sub-class bring claims against Verizon for (a)
21 violation of the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968
22 ("RICO"); (b) violation of the Telecommunications Act of 1934, 47 U.S.C. §§ 201, et seq.
23 (the "TCA"); and (c) breach of trust. SAC ¶ 6. Plaintiffs and the putative class and sub-
24 class also bring claims against all Defendants, other than the Verizon LECs, for tortious
25 interference with contract. Id. Plaintiffs and the putative sub-class bring additional claims
26 against Verizon California for: (a) violation of California Public Utilities Code ("CPUC") §
27 2890; and (b) breach of contract against all Defendants for violation of California Business
28 and Professions Code § 17200, et seq. (the "UCL") Id. Plaintiffs and the putative class and

1 sub-class seek actual, treble and exemplary damages, injunctive and declaratory relief,
2 interest, costs, and reasonable attorneys' fees. Id. ¶ 7.

3 On September 18, 2009, Plaintiffs filed a first amended complaint ("FAC"). FAC,
4 Dkt. 32. On September 10, 2010, the Court granted in part and denied in part Defendants'
5 motion to dismiss the FAC. Dkt. 60. The Court granted the motion with respect to
6 Plaintiffs' claims for breach of trust and violations of the TCA and 47 C.F.R. § 64.2401. Id.
7 The Court denied the motion with respect to Plaintiffs' claims for violation of RICO,
8 conspiracy to violate RICO, breach of contract, tortious interference with contract, violation
9 of CPUC § 2890, and violation of the UCL. Id.

10 In or about October 2010, the parties engaged in mediation under the supervision of
11 the Honorable Daniel H. Weinstein (Ret.). See Dkt. 60, 91. After over a year of mediation,
12 the parties reached an agreement on a proposed settlement of this matter ("Settlement").
13 See Weinstein Decl. ¶¶ 1, 8-10, Dkt. 91.

14 The salient terms of the Settlement call for: (1) complete refunds (i.e., 100%) of all
15 unauthorized charges for class members filing Full Payment Claims or, alternatively, Flat
16 Payments of \$40 for class members who do not want to file a Full Payment Claim; (2)
17 various forms of injunctive relief, as described below; (3) payment of attorneys' fees and
18 expenses in an amount up to \$7,500,000¹; and (4) an incentive award of \$5,000 for each of
19 the Class Representatives. Settlement Agreement at 10, 13-17, 22-23. In addition to
20 paying Plaintiffs' attorneys' fees and expenses, Verizon has agreed to pay the costs of
21 administering the Settlement and the incentive awards to the Class Representatives. Id. at
22 12-13. Verizon has also agreed to provide class members with the right to obtain, for free,
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26 ¹ The original Settlement Agreement contained what is characterized as a "clear
27 sailing provision," which states that "Verizon shall not oppose . . . or solicit others to
28 [oppose]" an application for attorneys' fees, costs and expenses in an amount that does not
exceed \$7,500,000. Settlement Agreement at 22. As set forth below, the parties have
eliminated this provision from the Settlement Agreement.

1 a billing summary identifying all Third-Party Charges² they were billed for during the class
 2 period and the ability to use that billing summary to submit a Full Payment claim to recover
 3 100% of all unauthorized Third-Party Charges. Id. at 9-10.³

4 With respect to injunctive relief, the Settlement provides the following changes to
 5 the manner in which Verizon conducts its third-party billing business: (1) an opt-in
 6 requirement before new customers can be billed for Third-Party Charges; (2) a notice
 7 program that explains to existing customers that Third-Party Charges may appear on their
 8 bills and that they have the option to block such charges for free; (3) a prominent notice to
 9 customers any time a new Third-Party Charge is proposed to be added to the customer's
 10 bill; (4) reduced cramming complaint thresholds for Third-Party Charges at which Verizon
 11 has the right to terminate billing by Aggregators and Third-Party Service Providers; (5)
 12 increased penalties for cramming complaints; (6) enhanced training of Verizon customer
 13 service representatives to improve adherence to Verizon's First Call Resolution Policy,
 14 which allows customers who have been billed for Third-Party Charges to obtain a full
 15 refund of unauthorized charges without engaging in the settlement procedures outlined in
 16 the Settlement Agreement; (7) a requirement that obligates Verizon to cause Aggregators to
 17 notify other landline carriers (AT&T and Qwest) and governmental entities of an
 18

19 ² The Settlement Agreement defines "Third Party Charge" as "a charge from a Third-
 20 Party Service Provider billed by Verizon to the Settlement Class through an Aggregator."
 21 Settlement Agreement at 9. The term "Third-Party Service Provider(s)" is defined as "any
 22 Person whose charges were billed by Verizon to the Settlement Class through an
 23 Aggregator." Id. The term "Aggregators" is defined as "Billing Concepts, Inc. a/k/a
 24 Billing Services Group Clearing Solutions or BSG d/b/a USBI and ZPDI, ACI Billing
 Services Inc. d/b/a OAN, Enhanced Services Billing, Inc. d/b/a ESBI, and HBS Billing
 Services Company (collectively, 'Billing Concepts Inc.'). The Billing Resource d/b/a
 Integretel ('The Billing Resource'), ILD Teleservices, Inc., ('ILD'), Transaction Clearing,
 LLC ('Transaction Clearing') and PaymentOne Corp., d/b/a PaymentOne or Ebillit
 ('Payment One') or any of them." Id. at 2.

25 ³ As part of the Settlement, Verizon agreed to design, develop and implement
 26 computer programs to search approximately seven years of bills for each class member
 27 (consisting of almost 3.4 billion customer bills) for the purpose of providing billing
 28 summaries to class members. See Schaefer Decl. ¶¶ 7-12, 51-52, Dkt. 171. The billing
 summaries provide the names of each Third-Party Service Provider and Aggregator, as well
 as the respective monthly and total charges billed by each Aggregator and Third-Party
 Service Provider. See id., Exhs. J-K.

1 Aggregator's rejection of a Third-Party Service Provider's application for billing services
2 related to Third-Party Charges or the termination of billing services related to Third-Party
3 Charges⁴; (8) a requirement that Third-Party Service Providers must have an order
4 confirmation process for Third-Party Charges which verifies any individual order placed
5 for such charges via (a) personal information obtained from a customer that must be
6 verified by an Aggregator, and (b) an opt-in communication with customers confirming that
7 they understand they have just placed an order with the Third-Party Service Provider; (9)
8 notice to customers billed by Third-Party Service Providers terminated for cramming; and
9 (10) regular independent audits of Aggregators and Third-Party Service Providers to ensure
10 compliance with Verizon and Aggregator anti-cramming policies and procedures relating to
11 Third-Party Charges.⁵ Settlement Agreement at 13-17.

12 In exchange for the relief set forth above, class members agree to release claims that
13 arise out of or are related to the Third-Party Charges billed by Verizon on behalf of the
14 Aggregators from April 27, 2005 to the date of preliminary approval of the Settlement that
15 have been asserted or that might have been asserted in this action, excluding (a) message
16 telephone services ("MTS") usage charges; (b) charges that relate to a change in the
17 customer's primary interexchange carrier ("PIC"); and (c) charges billed by local telephone
18 companies purchased from Verizon by Frontier Communications Corporation, FairPoint
19 Communications, Inc., and Hawaiian Telecom. See Settlement Agreement at 6-7, 21-22.
20 Approval of the Settlement is not conditioned on any minimum attorneys' fee award,
21 minimum costs award, or the payment of any incentive award. See Settlement Agreement
22 at 22-24.

23 _____
24 ⁴ If Verizon suspends an Aggregator from billing services related to Third-Party
25 Charges, Verizon will notify relevant government entities, AT&T, and Qwest within 30
days and provide the reasons for such suspension. Settlement Agreement at 15.

26 ⁵ In addition, Verizon will require Aggregators to maintain an ongoing internal audit
27 function to ensure compliance with all required policies relating to Third-Party Charges,
including the notice policies in the Settlement Agreement. Settlement Agreement at 16.
28 The internal audit function is subject to the regular independent auditing process. Id. Any
substantial failure to comply with the required policies will result in early termination of the
Aggregator by Verizon. Id.

1 On February 28, 2012, the Court issued an Order preliminarily approving the
2 Settlement. Dkt. 99. In March 2012, Verizon announced that it intended to eliminate
3 billing for what are called "miscellaneous" or "enhanced services" on its customers' bills,
4 i.e., those services that have generated the bulk of cramming complaints.⁶ See Jacobs Decl.
5 ¶ 7, Dkt. 168-9. As of December 31, 2012, Verizon no longer allows such charges on its
6 bills. See id.; Schaefer Decl. ¶ 57.

7 On March 16, 2012, ESBI, a billing aggregator, filed a motion to intervene under
8 Rule 24 of the Federal Rules of Civil Procedure. Dkt. 102. In support of its motion, ESBI
9 argued that it has a significant protectable interest in the amount of attorneys' fees and costs
10 that the Court approves as part of the proposed Settlement because ESBI is required to
11 indemnify Verizon for certain costs that Verizon has agreed to pay under the Settlement
12 Agreement pursuant to an indemnity provision in a Billing Services Agreement entered into
13 between Verizon and ESBI. See Dkt. 154. At the hearing on the motion to intervene, the
14 parties agreed to amend the Settlement Agreement to allow Verizon to oppose Class
15 Counsel's request for attorneys' fees and expenses. In other words, the parties agreed to
16 remove the "clear sailing" provision from the Settlement Agreement. See Dkt. 144. On
17 February 5, 2013, the Court issued an Order denying ESBI's motion to intervene, but
18 allowing ESBI to file an *amicus* brief in response to Class Counsel's request for attorneys'
19 fees and expenses. Dkt. 154.

20 On July 2, 2012, Class Counsel filed a Motion for Attorneys' Fees and Expenses and
21 Class Representative Incentive Awards. Dkt. 123. On August 17, 2012, the Federal Trade
22 Commission ("FTC") filed a motion for leave to file an *amicus* brief objecting to the
23 Settlement. Dkt. 136. The FTC's *amicus* brief expresses concerns about, among other
24 things, provisions in the Settlement Agreement relating to the release of claims and the
25 claims process. Dkt. 136. Also on August 17, 2012, the United States Department of
26 Justice ("DOJ") filed a "statement of interest" objecting to the Settlement. Dkt. 137. The
27

28 ⁶ Not long thereafter, AT&T, Inc. made a similar announcement. See Dkt. 123.

1 DOJ's statement of interest expresses concerns regarding the release of claims, the claims
2 process, and the method for notifying potential class members of the Settlement. Dkt. 137.
3 On August 23, 2012, the Court granted the FTC's request to file an *amicus* brief. Dkt. 140.

4 In response to the FTC's and the DOJ's objections to the Settlement, the parties
5 engaged in numerous discussions with the FTC and DOJ regarding their concerns. Dkt.
6 158. Following these discussions, the parties agreed to modify the Settlement Agreement.
7 Id. On March 1, 2013, the parties filed a stipulation with the Court outlining several
8 modifications to the Settlement Agreement relating to the release of claims and the claims
9 process. Id.

10 On March 4, 2013, the FTC filed a "Notice Regarding Final Approval Hearing,"
11 notifying the Court of its intention not to participate in the Final Approval Hearing because
12 the modifications to the Settlement Agreement "significantly improve the settlement for
13 consumers." Dkt. 159. Specifically, the FTC states that the modified Settlement
14 Agreement improves the Settlement for consumers by: (1) no longer releasing Third-Party
15 Service Providers – the parties alleged to have fraudulently billed consumers through
16 Verizon; (2) limiting the release for Aggregators by making it clear that the FTC or any
17 other government agency may obtain full restitution, disgorgement, or compensation for
18 consumers without this lawsuit having any preclusion effect; (3) requiring Class Counsel to
19 represent consumers whose claims are challenged; and (4) providing that Letters of
20 Authorization, Third-Party Verification Recordings, and checked boxes are insufficient to
21 rebut sworn consumer testimony when a consumer's claim is challenged. Id.⁷

22 On March 5, 2013, the DOJ filed a "Notice of Position Regarding Revised
23 Settlement," stating that the revised Settlement Agreement "accommodates the . . . non-
24 notice-related concerns" it previously expressed regarding the Settlement.⁸ Dkt. 160.

26 ⁷ The FTC, however, states that it "remains generally concerned about the propriety
27 of a claims-made process in the cramming context." Dkt. 159.

28 ⁸ The DOJ's notice states that it "remains concerned about the adequacy of the notice
sent to [potential] class members." Dkt. 160.

Specifically, the notice filed by the DOJ states that the revised Settlement Agreement "enhance[s] consumer rights and make[s] it easier for class members to obtain justified recoveries" because: (1) it no longer contains provisions that could have blocked government enforcement actions against Aggregators and crammers; (2) it does not allow the use of customer "letters of authorization" and other deceptive and falsified materials to defend against class member recovery; (3) it requires Aggregators and crammers to produce all documents relating to a class member when attempting to block the class member's recovery, and (4) it requires Class Counsel to represent class members in disputes. Id.

On June 11, 2013, Plaintiffs filed a Motion for Final Approval of Class Action Settlement. Dkt. 168. Also on June 11, 2013, Verizon and ESBI filed briefs objecting to Class Counsel's request for attorneys' fees and expenses. Dkt. 173, 175. On June 24, 2013, Verizon filed a statement of non-opposition to Plaintiffs' Motion for Final Approval of Class Action Settlement. Dkt. 176. On June 26, 2013, Class Counsel filed a reply to their Motion for Attorneys' Fees and Expenses and Class Representative Incentive Awards. Dkt. 177. On June 28, 2013, Class Counsel filed a supplemental declaration, attaching for the Court's *in camera* review counsels' detail time and expense reports. Dkt. 184. On July 2, 2013, Verizon filed objections to reply evidence. Dkt. 185.

A Final Approval Hearing was held on July 9, 2013. Dkt. 188. On July 11, 2013, the Court issued an Order referring Class Counsel's request for attorneys' fees and expenses to Magistrate Judge Corley for determination. Dkt. 189.

II. DISCUSSION

A. Motion for Final Approval of Class Action Settlement

1. Legal Standard

Federal Rule of Civil Procedure 23(e) provides that: "The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." Approval under this rule entails a two-step process: (1) preliminary approval of the settlement; and (2) final approval of the settlement at a fairness hearing following notice to the class. See Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc., 221

1 F.R.D. 523, 525 (C.D. Cal. 2004). The Court may finally approve a class settlement "only
2 after a hearing and on finding that it is fair, reasonable, and adequate." Fed.R.Civ.P.
3 23(e)(2); In re Bluetooth Headset Products Liability Litigation, 654 F.3d 935, 946 (9th Cir.
4 2011).

5 The primary concern of Rule 23(e) is "the protection of those class members,
6 including the named plaintiffs, whose rights may not have been given due regard by the
7 negotiating parties." Officers for Justice v. Civil Serv. Comm'n of the City and County of
8 San Francisco, 688 F.2d 615, 624 (9th Cir. 1982). The district court's discretion in
9 considering final approval of a settlement is informed by balancing the following factors:

10 (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and
11 likely duration of further litigation; (3) the risk of maintaining class action
12 status throughout the trial; (4) the amount offered in settlement; (5) the extent
13 of discovery completed and the stage of the proceedings; (6) the experience
14 and views of counsel; (7) the presence of a governmental participant; and (8)
15 the reaction of class members to the proposed settlement.

16 Churchill Village LLC v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004). "This list is not
17 exhaustive, and different factors may predominate in different factual contexts." Torrise v.
18 Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993). In addition to these factors,
19 the Court may consider the procedure by which the parties arrived at the settlement. See
20 Chun-Hoon v. McKee Foods Corp., 716 F.Supp.2d 848, 851 (N.D. Cal. 2010).

21 The district court's role in evaluating a proposed settlement is limited to the extent
22 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
23 collusion between the negotiating parties, and that the settlement is fair as a whole. See
24 Rodriguez v. West Publ'g Corp., 563 F.3d 948, 965 (9th Cir. 2009). It is neither for the
25 court to reach any ultimate conclusions regarding the merits of the dispute, nor to second
26 guess the settlement terms. Officers for Justice, 688 F.2d at 625. "Rule 23(e) wisely
27 requires court approval of the terms of any settlement of a class action, but the power to
28 approve or reject a settlement negotiated by the parties before trial does not authorize the
court to require the parties to accept a settlement to which they have not agreed." Evans v.
Jeff D., 475 U.S. 717, 726 (1986); see also Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026

(9th Cir. 1998) ("Neither the district court nor this court ha[s] the ability to delete, modify or substitute certain provisions. The settlement must stand or fall in its entirety.")

2. Balancing of Factors

a. Strength of Plaintiffs' Case

The first factor to consider is the strength of Plaintiffs' case. Because this action settled before any substantive motions were filed, the Court did not have the opportunity to consider the merits of Plaintiffs' claims. However, while Plaintiffs believe their claims have merit, they readily concede that they faced significant class certification, liability, and damages hurdles. Pls.' Mtn. at 8-9. According to Class Counsel, numerous prior class action lawsuits relating to cramming have resulted either in outright dismissal or in settlements with no significant recovery or changes in the way third-party billing is conducted. *Id.* at 8 (citing Schachman Decl. ¶ 13, Dkt. 91-7; Jacobs Decl. ¶ 3, Dkt. 91-6). Class Counsel aver that in the course of deciding whether to initiate this case, they learned that the industry (telephone companies, aggregators and third-party providers) had fared extremely well in litigation, including almost always defeating class certification. Jacobs Decl. ¶ 3. Given the challenges faced by Plaintiffs in prevailing on their claims, this factor weighs in favor of approving the Settlement.

b. Risk, Expense, Complexity, and Likely Duration of Further Litigation

The next factor to consider is the risk, expense and duration associated with prosecuting this case through trial and the appellate process. These considerations favor approval of the Settlement. There is substantial risk in litigating this case further. Plaintiffs acknowledge that there is uncertainty in prevailing on their claims if the litigation were to go forward due to the 24 affirmative defenses that have been asserted by Defendants. Pls.' Mtn. at 8. Further, Plaintiffs note that Verizon has maintained throughout this action that they would be unable to: (1) secure certification of a class; (2) hold Verizon liable for the unauthorized billing of its third party billing partners; and (3) succeed on the merits of the case, including their RICO theory of liability. *Id.* Plaintiffs also note that Verizon contends

1 that they would be unable to prove damages on a class wide basis because the question of
2 whether individual class members authorized particular charges is inherently individual.

3 Id.

4 While Plaintiffs dispute Verizon's characterization of their claims, they acknowledge
5 that the historical failure of cramming cases "underlines" the challenge of litigating this
6 case to judgment. Pls.' Mtn. at 8. Moreover, Plaintiffs recognize that the inherent
7 uncertainty that comes with all class action litigation poses additional risks. Id. According
8 to Plaintiffs, if they failed to obtain class certification, "the case would effectively be over
9 and class members left with nothing." Id. at 8-9. Furthermore, Plaintiffs assert that, in the
10 absence of settlement, the expense, duration and complexity of the protracted litigation that
11 would result would be substantial given the significant hurdles that remain, including,
12 among other things, anticipated summary judgment motions, contested class certification,
13 Daubert motions, and appeals. Id. at 9.

14 The Court finds that Plaintiffs have shown that Verizon intended to vigorously
15 defend against this action had the parties not agreed to settle. As such, proceeding further
16 in this already protracted litigation would have presented numerous risks to Plaintiffs,
17 including the denial of a motion for class certification, dismissal of this action upon a
18 dispositive motion, and judgment in favor of Verizon after trial. Such considerations, and
19 the substantial expense associated with litigating this action further, weigh in favor of
20 approving the Settlement. See Rodriguez, 563 F.3d at 964 (difficulties and risks in
21 litigating further weighed in favor of approving settlement).

22 **c. Risk of Maintaining Class Action Status**

23 The third factor considers the risk of maintaining class certification in the event the
24 litigation proceeds forward. As noted, Verizon maintains that it has meritorious defenses to
25 the claims alleged in this action, and that it was prepared to vigorously oppose class
26 certification. Pls.' Mtn. at 8. According to Plaintiffs, Verizon has repeatedly asserted that
27 they had virtually no chance of certifying a class. Id. While Plaintiffs contend that there
28 are features about this case that distinguish it from other cramming cases, they admit that

1 class certification has been denied in the "overwhelming run of cramming cases." See, e.g.,
2 Lady Di's, Inc. v. Enhanced Services Billing, Inc., 654 F.3d 728 (7th Cir. 2011) (affirming
3 the denial of class certification where district court found that common issues of fact or law
4 did not predominate over individual issues because the details of each customer's individual
5 transactions would need to be examined to consider whether the claims for unjust
6 enrichment or statutory deception were proven). Given the difficulties and risks in
7 obtaining and maintaining class certification, this factor weighs in favor of approving the
8 Settlement.

9 **d. Amount Offered in Settlement**

10 The amount offered in settlement is another factor for the Court to consider in
11 determining whether to finally approve a proposed settlement. Churchill Village, 361 F.3d
12 at 574. In this case, Defendants have agreed to pay for 100% of all unauthorized Third-
13 Party Charges submitted to Verizon by Aggregators on behalf of Third- Party Service
14 Providers. Alternatively, class members may opt for a \$40 Flat Payment. In addition to
15 monetary benefits, the Settlement provides meaningful injunctive relief as outlined above,
16 including, among other things, an opt-in requirement before new customers can be billed
17 for Third-Party Charges, a notice program that explains to existing customers that Third-
18 Party Charges may appear on their bills and that they have the option to block such charges
19 for free, and a prominent notice to customers any time a new Third-Party Charge is
20 proposed to be added to their bill. The Settlement Agreement also requires Verizon to pay
21 the costs of notice and settlement administration,⁹ incentive awards for the Class
22 Representative in an amount up to \$10,000, and Class Counsel's attorneys' fees and
23 expenses in an amount up to \$7,500,000.

24 Finally, while it is unclear as to the precise impact this lawsuit had on Verizon's
25 decision to no longer permit third-party charges for "enhanced or miscellaneous services"
26 to appear on its customers' bills, the timing of Verizon's decision (which occurred less than
27

28 ⁹ Through May 31, 2013, the Settlement Administrator has billed Verizon a total of
\$5,508,291 for its services in administering the Settlement. Redell Decl. ¶ 32.

one month after the Settlement was preliminarily approved) suggests to the Court that the instant action played a role in that decision. The Court notes that Verizon's decision to eliminate services that have generated the bulk of cramming complaints is laudable and confers a substantial benefit not only on class members but also on all current and future Verizon customers. The parties are to be commended for their efforts in obtaining this result. Accordingly, because the Settlement has resulted in significant benefits to class members, this factor weighs in favor of approving the Settlement.

e. Extent of Discovery Completed and the Stage of the Proceedings

The Settlement in this action was reached after the parties engaged in discovery, litigated a motion to dismiss, and participated in mediation that involved an extensive exchange of information, multiple briefings, and six all-day mediation sessions overseen by the Honorable Daniel H. Weinstein (Ret.) over the course of more than a year. See Weinstein Decl. ¶¶ 1, 8-10, Dkt. 91-2. The fact that the Settlement was reached at this juncture of the proceedings supports the conclusion that the parties' decision to settle was a fully informed one. Therefore, this factor weighs in favor of approving the Settlement.

f. Experience and Views of Counsel

The experience and views of counsel representing the parties support approval of the Settlement. See Hanlon, 150 F.3d at 1026 (noting that the experience of counsel representing plaintiff and defense also favors final approval of the proposed settlement). The attorneys representing both sides are experienced in this type of litigation and are in a position to opine whether the Settlement is fair, reasonable and adequate. Verizon has been represented by Munger, Tolles & Olson LLP, a well-known and reputable law firm that has considerable experience with complex litigation and class actions. Verizon's counsel supports approval of the Settlement. Dkt. 176. Likewise, Class Counsel have extensive experience with class actions,¹⁰ and they "unreservedly recommend the settlement to the Court as in the best interests of the class." Pls.' Mtn. at 12. Given the collective experience

¹⁰ See Dkt. 91-3 (firm resumes, including experience of Class Counsel).

of the attorneys involved in this litigation, the Court credits counsels' view that the Settlement is worthy of approval. See Rodriguez, 563 F.3d at 967 ("[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation"). Moreover, the Court notes that the experienced mediator also "unreservedly" recommends the Settlement. See Weinstein Decl. ¶¶ 2, 4-6, 11.

g. Governmental Participant

The Settlement Administrator sent a notice packet by certified mail to 12 Public Utilities Commissions and 52 federal and state officials, including the Attorney General of the United States, the Attorneys General of each of the 50 states and the District of Columbia. Redell Decl. ¶ 5. Other than the FTC and the DOJ, no governmental entity has objected to the Settlement. As for the FTC and the DOJ, they both decided not to participate in the Final Approval Hearing following the modification of certain provisions of the Settlement Agreement. Accordingly, the Court finds that this factor weighs in favor of approving the Settlement.

h. Reaction of the Class Members

The Ninth Circuit has held that the number of class members who object to a proposed settlement is a factor to be considered. Mandujano v. Basic Vegetable Prods. Inc., 541 F.2d 832, 837 (9th Cir. 1976). Out of the potential 8,089,893 class members, 250,236 submitted valid claims,¹¹ there are 28 objections,¹² and 621 have chosen to opt out.

¹¹ As of June 7, 2013, the Settlement Administrator had received 349,475 Claim Forms. Redell Decl. ¶ 27. Of these Claim Forms, 250,236 were deemed valid. Id. The remaining 99,239 Claim Forms were deemed invalid because they: (1) could not be matched with any account on the Settlement Class List (79,065); (2) did not elect either the Flat or Full Payment option, or elected both the Flat and Full Payment option (3,359); or (3) did not include a Charge Summary, claimed an amount different from the amount indicated on the Charge Summary, or failed to indicate on their Charge Summary which charges were unauthorized (16,815). According to the Settlement Administrator, "[f]or most Claim Forms, classification as valid or invalid is not a final determination." Id.

¹² As of June 5, 2013, the Settlement Administrator had received 24 objections. Redell Decl. ¶ 31. While the Settlement Administrator has only received 24 objections, Class Counsel has identified 28 objections. Pls.' Mtn. at 12. Below, the Court will address each of the 28 objections identified by Class Counsel.

1 See Redell Decl. ¶¶ 7, 27, 30-31; Pl.'s Mtn. at 12. Given the amount of valid claim forms
2 submitted, and the relatively small number of objections and opt-outs, the reaction of the
3 class to the Settlement is positive, which favors approving the Settlement. See Rodriguez,
4 563 F.3d at 967 ("The court had discretion to find a favorable reaction to the settlement
5 among class members given that, of 376,301 putative class members to whom notice of the
6 settlement had been sent, 52,000 submitted claims forms and only fifty-four submitted
7 objections."); Churchill Village, 361 F.3d at 577 (affirming approval of a class action
8 settlement where 90,000 class members received notice, and 45 objections were received).

9 **i. Arms-Length Negotiation**

10 Finally, the Court considers whether the Settlement was likely the result of good
11 faith arms-length negotiations, or whether it was the product of fraud or collusion. See
12 Officers for Justice, 688 F.2d at 625. In this case, the parties agreed to settle this matter
13 after over a year of arms-length negotiations overseen by the Honorable Judge Daniel H.
14 Weinstein (Ret.). According to the mediator, the Settlement was reached at the end of an
15 "extraordinarily thorough mediation process" and is "the result of hard fought, good faith
16 and arm's length negotiation that takes into account the risk and potential rewards of the
17 claims being settled." See Weinstein Decl. ¶ 11. Given the length and the nature of the
18 mediation process as described in detail by the mediator, id. ¶¶ 9-11,¹³ the Court is satisfied
19 that the Settlement is not the product of fraud or collusion. Therefore, this factor weighs in
20 favor of approving the Settlement. See In re Bluetooth, 654 F.3d at 948 (participation of
21 mediator is not dispositive, but is "a factor weighing in favor of a finding of non-
22 collusiveness").

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26 ¹³ Prior to reaching an agreement in principle to settle this matter, the parties
27 participated in six all-day mediation sessions and numerous telephonic and e-mail
28 communications with the mediator and his colleague. See Weinstein Decl. ¶ 9. As part of
the mediation process, the parties served detailed information and document requests,
exchanged the requested information and documents, and exchanged several rounds of
briefs. Id.

j. Conclusion

On balance, the Court concludes that the relevant factors weigh in favor of a finding that the Settlement is fair, reasonable, and adequate.

3. Objections

In determining whether to finally approve a class action settlement, the Court considers whether there are any objections to the proposed settlement and, if so, the nature of those objections. However, the fact that there is some opposition does not necessitate disapproval of the settlement; rather, the court must evaluate whether the objections suggest serious reasons why the proposal might be unfair. Bennett v. Behring Corp., 737 F.2d 982 (11th Cir. 1984); White v. Experian Information Solutions, Inc., 803 F.Supp.2d 1086, 1100 (C.D. Cal. 2011). As will be set forth below, none of the objections present any serious reasons for rejecting the Settlement.

a. Standing to Object

It is well-settled that only class members may object to a class action settlement. Gould v. Alleco, Inc., 883 F.2d 281, 284 (4th Cir. 1989); see Fed.R.Civ.P. 23(e)(5). Thus, a court need not consider the objections of non-class members because they lack standing. See Californians for Disability Rights v. Cal. Dept. of Transp., 2010 WL 2228531, at *8 (N.D. Cal. 2010) (Armstrong, J.).

The following objectors lack standing to object to the Settlement because they are not class members: Joseph and Betty Fix, Mark Drozdov,¹⁴ Forrest Turkish, Dolores Warner, Steven K. Morrison, Richard Price, Ronald Riley, John J. Pentz, Jr., Ronald Green, Maxine Dillard/Sanae Dillard, Elizabeth Kirk-Prevatte, and Melissa Brown. According to Gary Zimmers, who is a Consultant Systems Engineer in Verizon Data Services LLC's Information Technology group, these individuals incurred no Third-Party Charges during

¹⁴ In a letter dated June 25, 2013, Mark Drozdov informed Class Counsel that he is withdrawing his objections to the Settlement. Therefore, Mr. Drozdov's objections are MOOT.

1 the Class Period and therefore are not class members. Zimmers Decl. ¶¶ 3, 7-19.

2 Accordingly, the objections submitted by these individuals are OVERRULED.

3 **b. Insufficient Information**

4 Based on the information submitted, Verizon was unable to determine whether the
 5 following individuals were billed for Third-Party Charges during the Class Period: James
 6 McCullough,¹⁵ Maurice Margulies¹⁶ and Daniel Martines.¹⁷ Zimmers Decl. ¶¶ 20-22.
 7 Zimmers avers that these individuals only provided their name and address in connection
 8 with their respective objections in violation of the Court's Preliminary Approval Order and
 9 the Class Notice. See Dkt. at 99; Azari Decl., Exh. C, Dkt. 169. Zimmers searched
 10 Verizon's records, but did not locate an account for these individuals with Verizon.
 11 Zimmers Decl. ¶¶ 20-22. Accordingly, because these individuals are not part of the class,
 12 and/or because they failed to comply with the proper procedures to object to the Settlement,
 13 their objections are OVERRULED.

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 17 ¹⁵ Mr. McCullough generally complains that the notice he received is not
 18 understandable to non-lawyers and states that he did not receive a billing summary within
 19 fourteen days after making an online request. He also states that he "wish[es] to be
 20 included in any payment of this settlement over \$40.00, although so far no good faith has
 21 been shown from [Verizon's] website search request." Mr. McCullough's has not
 articulated a basis for rejecting the Settlement. His objection does not demonstrate that the
 Settlement is unfair, inadequate, or unreasonable. Mr. McCullough failed to show that the
 class notice is inadequate or that he suffered any prejudice resulting from his failure to
 receive a charge summary within fourteen days of his online request. Accordingly, his
 objection is OVERRULED.

22 ¹⁶ Mr. Margulies objects to the Settlement on the ground that it does not provide for
 23 punitive damages. However, because he has failed to show that the Settlement is unfair,
 24 inadequate, or unreasonable for the failure to include such damages, Mr. Magulies'
 objection is OVERRULED. See In re Oil Spill By Oil Rig Deepwater Horizon, --- F.R.D. -
 25 ---, 2013 WL 144042, at *44 (E.D. La. 2013) ("Given that any award of punitive damages
 26 is inherently speculative and discretionary, courts regularly approve settlements that offer
 27 no or little compensation representing the risk of a punitive damages award.") (citing
 cases); Rodriguez, 563 F.3d at 964 ("courts generally determine fairness of an antitrust
 class action settlement based on how it compensates the class for past injuries, without
 giving much, if any, consideration to treble damages").

28 ¹⁷ Because Mr. Martines failed to articulate any basis for his objection to the
 Settlement, his objection is OVERRULED on the merits.

c. Remaining Objections of Class Members

i. Lory Axtman

Lory Axtman objects to Class Counsel's request for attorneys' fees and expenses and Class Representative incentive awards. However, she offers no specific reason as to why the Settlement should not be approved based on Class Counsel's request. Therefore, Ms. Axtman's objection is **OVERRULED**.

ii. Sandra Diaz

The objection filed by Sandra Diaz is largely unintelligible. Ms. Diaz appears to claim that she has been "ripped off" by third-party charges and thus is requesting the sum of \$99,999.99. However, she offers no specific reason for objecting to the proposed Settlement. Therefore, Ms. Diaz's objection is **OVERRULED**.

iii. Todd Elliott

Todd Elliott submitted a lengthy letter to the Court discussing Verizon's tiered service, stating that "All in All I want Verizon to increase the number of tier programs that adequately accommodate their customers." The objection of Mr. Elliott states no ground for rejecting the Settlement. Therefore, his objection is **OVERRULED**.

iv. Barbara Hilton

The one-sentence objection of Barbara Hilton states no substantive ground for her objection to the Settlement. Therefore, Ms. Hilton's objection is **OVERRULED**.

v. Shirley Jones

Shirley Jones objects to Class Counsel's request for attorneys' fees and expenses and Class Representative incentive awards, but she offers no reason for her objection other than she wants all her "winnings . . . to come directly to [her]." Because Ms. Jones states no substantive ground for objecting to the Settlement, her objection is **OVERRULED**.

vi. Irene Nelson

Irene Nelson objects to Class Counsel's request for attorneys' fees and expenses and Class Representative incentive awards. However, Ms. Nelson offers no reason for

1 objecting to the Settlement other than wanting "the best for [her] in monetary settlement."
2 Therefore, Ms. Nelson's objection is OVERRULED.

3 **vii. Mrs. C. Parker**

4 Mrs. C. Parker objects to Class Counsel's request for attorney's fees and expenses
5 and Class Representative incentive awards. However, because she did not offer any reason
6 why the Settlement is unfair, inadequate, or unreasonable, Mrs. Parker's objection is
7 OVERRULED.

8 **viii. Fanette Pollack**

9 Fanette Pollack objects to Class Counsel's request for attorneys' fees and expenses
10 on the ground that the claims process is "sloppy, inaccurate, duplicative and cumbersome,
11 and not designed to serve the interests of the class." Specifically, Ms. Pollack takes
12 exception to the fact that she did not timely receive her charge summary after submitting
13 two requests online. She states that she finally received her charge summary approximately
14 two weeks after requesting it directly from the Settlement Administrator. Ms. Pollack
15 asserts that "if [Class Counsel's] handling of the case was anything like their
16 implementation of the settlement process for Verizon customers, they should not be paid
17 anything approaching [\$7,500,000]." The mere fact that Ms. Pollack experienced delay in
18 receiving her charge summary is not a reason to reject the Settlement. Her objection does
19 not demonstrate that the Settlement is unfair, inadequate, or unreasonable. Ms. Pollack has
20 not shown that she or any other class member has suffered any prejudice resulting from the
21 delay in receiving a charge summary. Therefore, Ms. Pollack's objection is OVERRULED.

22 **ix. Richard Principio**

23 Richard Principio's objection states that he "feel[s] that it is unfair to have to pay for
24 my own attorney's fees. But I would like my money that's due me." Since Verizon is
25 responsible for the payment of fees, Mr. Principio's objection is without merit, and
26 therefore OVERRULED.

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x. Charles Quinn

Charles Quinn objects to the payment of attorney's fees and expenses in the amount of \$7,500,000 and to the payment of anything over \$500 to Class Representative Desiree Moore. Mr. Quinn states that attorneys' fees and expenses in the amount of \$7,500,000 for "representing a \$40 claim" is extravagant, but does not offer any compelling reason why the Settlement is unfair, inadequate, or unreasonable. Therefore, his objection is **OVERRULED**.

xi. David Rourke

David Rourke's objection states that he "got severe damages & mental anguish" and that Verizon "turned in incorrect credit reports . . . ruining his credit for years. . . ." Because Mr. Rourke offers no specific reason for objecting to the Settlement, his objection is **OVERRULED**.

xii. Patrick Rudd

Patrick Rudd's objection states that he is an "objector to overcharges," but does not offer any reason why the Settlement is unfair, inadequate, or unreasonable. Therefore, his objection is **OVERRULED**.

xiii. Larry Stover

Larry Stover objects to the Settlement on the ground that attorneys' fees in the amount of \$7,500,000 "is an outrageous amount for a nuisance settlement and will only encourage these attorneys to file more of these." Mr. Stover's objection, however, states no substantive ground for objecting to the Settlement, and therefore is **OVERRULED**.

d. Procedurally Deficient Objections

The Preliminary Approval Order states, in relevant part, as follows:

Any Settlement Class Member who wishes to object to the proposed Settlement, the applications for attorneys' fees, costs and expenses or the request for the payment of incentive awards must file with the Court, and serve upon Class Counsel and Defendants' Counsel, a written objection no later than August 17, 2012. . . .

All such objections must be in writing and include: (i) the name, address and telephone number of the objecting Settlement Class Member; (ii) a detailed statement of objections to be made, including all factual and legal support for such objection; (iii) any evidence supporting the objection that is intended to

1 be introduced in support of the objection, including evidence of the objector's
2 membership in the Settlement Class. . . . Objections not filed and served in
3 accordance with this paragraph shall not be received or considered by the
4 Court. Any Settlement Class Member who fails to timely file and serve a
5 written objection in accordance with this paragraph shall be deemed to have
waived, and shall be foreclosed from raising, any objection to the Settlement,
to the fairness, reasonableness, or adequacy of the Settlement, to the payment
of attorneys' fees, costs, and expenses, the payment of incentive awards, or to
the Final Approval Order or the right to appeal same.

6 See Dkt. 99 at ¶ 11.

7 The Class Notice (long form) instructs class members that any objection to the
8 Settlement must be mailed to Class Counsel and defense counsel and filed with the Court.
9 Azari Decl., Exh. C-D. The notice further instructs class members that objections must
10 include the objector's name, address, phone number, a detailed statement of the objection,
11 all factual and legal support for the objection, evidence supporting the objection, including
12 evidence of the objector's membership in the Settlement Class, and the caption and case
13 number appearing on the Settlement Class Notice. Id.

14 In addition to the reasons stated above, the objections submitted by the following
15 individuals are also overruled for failing to comply with the procedural requirements for
16 objecting to the Settlement: Mr. and Mrs. Fix; Mr. Turkish; Ms. Warner; Mr. Green; Ms.
17 Dillard; Ms. Kirk-Prevatte; Mr. Margulies; Mr. Martines; Mr. Elliott; Ms. Hilton; Ms.
18 Jones; Ms. Nelson; Mrs. Parker; Mr. Principio; Mr. Rourke; and Mr. Stover.

19 Specifically, Mr. and Mrs. Fix's objection is OVERRULED because it does not
20 contain the caption and case number appearing on the Settlement Class Notice; Mr.
21 Turkish's objection is OVERRULED because it does not contain an address or phone
22 number and was not filed with the Court; Ms. Warner's objection is OVERRULED because
23 it was not served on Class Counsel; Mr. Green's objection is OVERRULED because it does
24 not contain the caption and case number appearing on the Settlement Class Notice; Ms.
25 Dillard's objection is OVERRULED because it is untimely; Ms. Kirk-Prevatte's objection is
26 OVERRULED because it does not contain the caption and case number appearing on the
27 Settlement Class Notice; Mr. Margulies objection is OVERRULED because it does not
28 contain the caption and case number appearing on the Settlement Class Notice; Mr.

1 Martines objection is OVERRULED because he did not file his objection with the Court or
2 provide his phone number; Mr. Elliott's objection is OVERRULED because he failed to
3 mail his objection to Class Counsel; Ms. Hilton's objection is OVERRULED because she
4 failed to provide a phone number or the caption and case number appearing on the
5 Settlement Class Notice; Ms. Jones' objection is OVERRULED because she failed to
6 provide the caption and case number appearing on the Settlement Class Notice; Ms.
7 Nelson's objection is OVERRULED because it is untimely, was not filed with the Court
8 and does not provide the caption and case number appearing on the Settlement Class
9 Notice; Mrs. Parker's objection is OVERRULED because her objection was not filed with
10 the Court and does not provide the caption and case number appearing on the Settlement
11 Class Notice; Mr. Principio's objection is OVERRULED because it was not timely filed
12 with the Court, was not sent to Class Counsel, and does not include his phone number; Mr.
13 Rourke's objection is OVERRULED because it does not provide his phone number; and
14 Mr. Stover's objection is OVERRULED because he did not serve his objection on Class
15 Counsel.

16 **e. Outstanding Concerns of the FTC and DOJ**

17 As discussed above, on March 1, 2013, the parties filed a stipulation outlining
18 certain modifications to the Settlement Agreement made in response to the DOJ's and the
19 FTC's objections to the Settlement. Dkt. 158. The FTC and DOJ subsequently filed
20 documents with the Court indicating that they did not intend to participate in the Final
21 Approval Hearing given the modifications to the Settlement Agreement. Dkt. 159, 160.
22 However, the FTC stated in its filing that it "remains generally concerned about the
23 propriety of a claims-made process in the cramming context," Dkt. 159, while the DOJ
24 stated in its filing that it "remains concerned about the adequacy of the notice sent to
25 [potential] class members." Dkt. 160. These concerns are addressed below.

26 **i. FTC**

27 Notwithstanding the modifications to the Settlement Agreement, the FTC remains
28 "generally concerned" about the Settlement's claims-made process. See Dkt. 136-1.

Specifically, the FTC is concerned that claimants are required to aver under penalty of perjury, to the best of their knowledge and belief, that they paid and did not knowingly authorize the claimed third-party charges, did not receive a refund for such charges, did not intentionally use the services associated with the charges, and did not release claims related to such charges in any prior litigation.¹⁸ Id. The FTC is also concerned that claims submitted by class members are subject to a challenge by entities that wrongly billed them, and that claimants are required to review their bills for a seven-year period to determine whether they were wrongfully charged. Id. The FTC asserts that these "hurdles" are likely to block valid claims and impede class members from filing a claim and thus lower the recovery for class members. Id. According to the FTC, given the extremely low incidence of legitimate Third-Party Charges, the only fair, reasonable, and adequate method for providing monetary relief is to eliminate the claims process and provide refunds to consumers who paid such charges unless there is reliable evidence that the consumer actually used the product. Id.

Although it is clear that adopting the FTC's proposal would be a better outcome for the class than the claims-made process agreed to by the parties, the Court finds that the FTC has failed to demonstrate that the Settlement should be rejected. The proper standard for approval of the Settlement is whether it is fair, reasonable, adequate, and free from collusion—not whether the class members could have received a better deal in exchange for the release of their claims. See Hanlon, 150 F.3d at 1027 ("Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion."); Officers for Justice, 688 F.2d at 625 ("The proposed settlement is not to be judged against a

¹⁸ The FTC notes that entities engaged in fraudulent billing frequently change their names to continue their fraudulent enterprise because they exceed the LECs' cramming complaint levels and are banned from billing through them. Dkt. 136-1. According to the FTC, the "ever-morphing" slate of entities that appear on consumers' phone bills is likely to confuse consumers and further deter them from filing a claim, especially where consumers must swear under penalty of perjury that they were billed for charges that they did not knowingly authorize. Id.

1 hypothetical or speculative measure of what might have been achieved by the negotiators.
2 Ultimately, the district court's determination is nothing more than 'an amalgam of delicate
3 balancing, gross approximations and rough justice.' ") (citations omitted).

4 The Court is persuaded by Class Counsel's argument that while the FTC's proposal
5 represents the ideal outcome for the class, the Settlement, including the claims-made
6 process, is the product of compromise following extensive arms-length negotiations. As
7 such, the fact that the parties did not agree to the FTC's proposal is not a proper basis to
8 reject the Settlement. It is undisputed that not all Third-Party Charges were unauthorized.
9 Further, the parties take sharply contrasting views on the percentage of unauthorized
10 charges. Given the parties' dispute regarding the percentage of unauthorized charges and
11 the obstacles Plaintiffs faced in certifying a class and prevailing on the merits of their
12 claims, the Court finds that the claims-made process, when viewed as part of the overall
13 Settlement Agreement, does not render the Settlement unfair, unreasonable, or inadequate.

14 The Court notes that the claims-made process is not as burdensome for class
15 members as the FTC suggests. Contrary to the FTC's contention, claimants do not have to
16 review seven years' worth of billing records to submit a claim. Rather, claimants may
17 request from the Settlement Administrator, free of charge, a billing summary developed by
18 Verizon, which provides the names of each Third-Party Service Provider and Aggregator,
19 as well as the respective monthly and total charges billed by each Aggregator and Third-
20 Party Service Provider during the class period. See Schaefer Decl. ¶¶ 51-53, Exhs. J-K.
21 The billing summary explains what the summary is, how to use it to file a claim, and
22 provides class members a link to a website with detailed instructions on how to submit a
23 claim. See id., Exhs. J-K. The billing summary also identifies, in an easily understandable
24 format, each Aggregator and each Third-Party Service Provider that billed for Third-Party
25 Charges during the class period, the amount of each charge and credit, and the net total for
26 each provider. See id. To complete the approximately three-to-four page form, a claimant
27 must simply place a check mark next to any charge that the claimant believes was
28 unauthorized. See id.

ii. DOJ

While the parties' modifications to the Settlement Agreement address the DOJ's non-noticed related concerns with the Settlement, the DOJ "remains concerned about the adequacy of the notice sent to [potential] class members." Dkt. 160. Specifically, the DOJ asserts that notice by telephone bill inserts to consumers who did not notice crammed charges on their telephone bills is inadequate. Id. According to the DOJ, "there is no reason to believe that the victims of cramming will see these notifications. These are the same consumers who did not notice unauthorized charges on their telephone bills in the first place. In fact, billing inserts may be less likely to be noticed than unauthorized charges, given that billing envelopes frequently contain promotional material that consumers ignore as junk mail." Dkt. 137.

In this case, the parties agreed to a Notice Plan which includes notice via mail (i.e., bill stuffer notice), e-mail, postcard, publication, and a website. Settlement Agreement 17-19. The bill stuffer notice was sent to current Verizon customers in an envelope which contained in prominent lettering a "call-out" on the outside of the envelope, calling attention to the fact that enclosed in the envelope was a yellow notice regarding "refunds of third-party charges" and identifying its color (yellow, which was a color different than any other document in the envelope). See Azari Decl. ¶¶ 21, Exhs. B-C. The bill stuffer states in large, bold text: **"CLASS ACTION SETTLEMENT NOTICE . . . You Received This Notice Because Verizon's Records Indicate You Were Billed For Third Party Charges between April 27, 2005 and February 28, 2012 and May Be Entitled to a Payment From This Class Action Settlement."** Id., Exh. C. The bill stuffer notice was sent in two consecutive monthly bills. Id. ¶ 23. In addition to bill stuffer notice, current Verizon customers with e-mail addresses also received e-mail notice. Id. ¶ 38. Current customers were also provided notice via newspaper publication and a website supported by Google Adwords. Id. ¶ 42, 44-46.

Rule 23(c) prescribes the "best notice practicable under the circumstances."

Fed.R.Civ.P. 23(c)(2). Under Rule 23(e), the "court must direct notice in a reasonable

1 manner to all class members who would be bound by the proposal." Fed.R.Civ.P. 23(e).
2 "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient
3 detail to alert those with adverse viewpoints to investigate and to come forward and be
4 heard.' " Churchill Village, 361 F.3d at 575; see Silber v. Mabon, 18 F.3d 1449, 1454 (9th
5 Cir. 1994) (In order to satisfy due process considerations, notice must be "reasonably
6 calculated, under all the circumstances, to apprise interested parties of the pendency of the
7 action and afford them an opportunity to present their objections."). Notice by publication
8 and mail has been found to be "clearly adequate." Walsh v. Great Atlantic & Pacific Tea
9 Co., 726 F.2d 956, 963 (3d Cir. 1983).

10 The DOJ criticizes the bill stuffer notice as inadequate but does not propose a better
11 form of notice to current Verizon customers or discuss the other forms of notice provided to
12 current Verizon customers. Nor does the DOJ provide any authority or analysis
13 demonstrating that class notice via a billing insert is inadequate in general, let alone
14 inadequate under the circumstances of this case. Indeed, as Plaintiffs point out, numerous
15 other courts have approved the use of a notice plan that included class notice via bill notice
16 inserts. See, e.g., Faigman v. AT & T Mobility LLC, 2011 WL 672648, at *3 (N.D. Cal.
17 2011).

18 Having reviewed the content of the bill stuffer notice and the other forms of notice,
19 the Court finds that the notice provided to class members is the best notice practicable
20 under the circumstances and satisfies the requirements of Rule 23 and due process.¹⁹ The
21 contents of the various forms of notice and the methods of dissemination²⁰ are sufficient to
22 inform class members about the lawsuit, the terms of the Settlement, and their legal rights
23 and options, including the procedures through which to submit claims, object to the
24 Settlement, or opt-out and pursue their own remedies. The Court finds that the DOJ's
25

26 ¹⁹ The Court has reviewed the CAFA notice and accompanying materials and finds
27 that they comply with all applicable requirements of CAFA. Redell Decl. ¶¶ 5-6, Exh. A.

28 ²⁰ The notice provided to class members is set forth in detail in the declarations of
Redell and Schaefer. See Redell Decl.; Schaefer Decl.

1 concern regarding the bill stuffer notice sent to current Verizon customers is not a reason to
2 reject the Settlement. The notice provided to current Verizon customers is reasonably
3 expected to reach these potential class members and inform them of the proposed
4 Settlement.

5 **B. Motion for Attorneys' Fees and Expenses and Class Representative**
6 **Incentive Awards**

7 **1. Attorneys' Fees and Expenses**

8 Class Counsel request attorneys' fees and expenses in the amount of \$7,500,000.
9 Dkt. 123. On July 11, 2013, the Court referred Class Counsel's request for attorneys' fees
10 and expenses to Magistrate Judge Corley for determination. Dkt. 189. In light of the
11 referral, the Court will defer final decision on the propriety of Class Counsel's request for
12 attorneys' fees and expenses. The Court notes that Magistrate Judge Corley's determination
13 as to the proper award of attorneys' fees and expenses is subject to review by this Court
14 upon the timely request of either party.

15 **2. Class Representative Incentive Awards**

16 Class Counsel request an incentive award of \$5,000 for each Class Representative to
17 compensate them for their efforts on behalf of the class. Dkt. 123. "The district court must
18 evaluate [named plaintiffs'] awards individually, using relevant factors includ[ing] the
19 actions the plaintiff has taken to protect the interests of the class, the degree to which the
20 class has benefitted from those actions, . . . [and] the amount of time and effort the plaintiff
21 expended in pursuing the litigation. . . ." Staton v. Boeing Co., 327 F.3d 938, 977 (9th Cir.
22 2003). "Such awards are discretionary . . . and are intended to compensate class
23 representatives for work done on behalf of the class, to make up for financial or
24 reputational risk undertaken in bringing the action, and, sometimes, to recognize their
25 willingness to act as a private attorney general." Rodriguez, 563 F.3d at 958-959. In this
26 district, a \$5,000 payment is presumptively reasonable. Ko v. Natura Pet Products, Inc.,
27 2012 WL 3945541, at *15 (N.D. Cal. 2012) (Armstrong, J.) (citing Hopson v. Hanesbrands
28 Inc., 2009 WL 928133, at *10 (N.D. Cal. 2009)).

1 Class Counsel aver that the Class Representatives assisted them in their pre-
2 litigation investigation, including providing valuable information and documents, and
3 continued to assist Class Counsel throughout this lawsuit. Schachman Decl. ¶¶ 26-27.
4 Specifically, the Class Representatives spent a substantial amount of time reviewing with
5 Class Counsel the facts regarding how they incurred unauthorized charges and their efforts
6 to obtain refunds of these charges prior to contacting Class Counsel. Id. ¶ 26. They also
7 made themselves available on numerous occasions during the three years this action was
8 pending prior to Settlement to review records, confer with Class Counsel regarding
9 questions that arose during the course of the litigation, and to receive updates on the
10 progress of the case. Id. ¶¶ 26-27. In addition, the Class Representatives reviewed all of
11 the major pleadings, motions and Orders in this case, aided Class Counsel with discovery,
12 reviewed the briefing on Defendants' motion to dismiss, and made themselves available by
13 telephone during the parties' mediation sessions. See id. ¶¶ 26-28. Upon review of the
14 record, and in light of the nature of the assistance the Class Representatives provided in this
15 case, the Court finds that the requested incentive award of \$5,000 for each of the Class
16 Representatives is reasonable.

17 **III. CONCLUSION**

18 For the reasons stated above, IT IS HEREBY ORDERED THAT:

19 1. Plaintiffs' Motion for Final Approval of Class Action Settlement is
20 GRANTED.

21 2. The terms of the Settlement Agreement as modified by the parties are
22 incorporated into this Order and are APPROVED.

23 3. All objections to the Settlement are OVERRULED.

24 4. The parties and the Settlement Administrator shall perform their respective
25 obligations under the terms of the Settlement Agreement.

26 5. The Class Representatives are each awarded \$5,000 as an incentive award.

27 6. Pursuant to the terms of the Settlement Agreement, the instant action is
28 dismissed with prejudice, subject to Paragraphs 7 and 8 below.


1 7. Without affecting the finality of this Order in any way, the Court hereby
2 retains jurisdiction to resolve any dispute regarding compliance with the Settlement
3 Agreement that cannot be resolved through the meet and confer process. Any disputes
4 regarding the Settlement Agreement shall be referred to Magistrate Judge Corley.

5 8. Per the parties' agreement, the attorneys' fees and expenses award shall not
6 exceed \$7,500,000. Class Counsel's request for an award of attorneys' fees and expenses
7 has been submitted to the Court and referred to Magistrate Judge Corley for determination,
8 subject to review by this Court upon timely request by either party.

9 9. This Order terminates Docket 168.

10 IT IS SO ORDERED.

11 Dated: 8/28/2013


SAUNDRA BROWN ARMSTRONG
United States District Judge